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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,370	02/08/2001	Jimmie Ray Mayfield	AUS920000883US1	6038
7590	08/26/2004		EXAMINER	
Rudolf O. Siegesmund Suite 2000 4627 N. Central Expressway Dallas, TX 75205-4022			LIPMAN, JACOB	
			ART UNIT	PAPER NUMBER
			2134	
			DATE MAILED: 08/26/2004	3

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/779,370	MAYFIELD, JIMMIE RAY
Examiner	Art Unit	
Jacob Lipman	2134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 08 February 2001.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 8-10 and 12 is/are allowed.

6)  Claim(s) 1-7, 11 and 13-23 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_ .  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2. 5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

## DETAILED ACTION

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 2/8/2001 has been considered by the examiner.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-7, 11, and 13-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 recites the limitation "the lowest T(N)". There is insufficient antecedent basis for this limitation in the claim.

5. Claims 5 and 11 recite the limitation "the QI timestamp". There is insufficient antecedent basis for this limitation in the claims.

6. Claims 6 and 13 recite the limitation "the new estimated completion time". There is insufficient antecedent basis for this limitation in the claims.

7. Claims 6 and 13 recite the limitation "the original estimated time". There is insufficient antecedent basis for this limitation in the claims.

8. Claim 7 recites the limitation "the next QI's timestamp". There is insufficient antecedent basis for this limitation in the claim.

9. Claim 14 recites the limitation "the next QI's timestamp". There is insufficient antecedent basis for this limitation in the claim.

10. Claim 15 recites the limitation "comprising: a memory". It is unclear how a memory would contain a memory.

11. Claim 22 recites the limitation "the time stamp". There is insufficient antecedent basis for this limitation in the claim.

12. The examiner has found that the claims are full of problems with lacking antecedent basis. All the claims should all be reviewed closely. The examiner has listed many examples of problems.

***Allowable Subject Matter***

13. Claims 8-10 and 12 are allowed.

14. Claims 1-23 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

15. The following is a statement of reasons for the indication of allowable subject matter:

The limitation "determining the lowest T(N)", which appears in all claims, is defined in depth in the specification, specifically in figure 10. This full definition is incorporated into the claims. The same is true for Q(N).

Kopparapu discloses load balancing by the round robin method (page 28), as was also disclosed as prior art by applicant. Kopparapu further discloses weighted distribution (page 29), which takes into account the time it would take for each device to finish the task being assigned. This method of load balancing has been seen throughout the art. Kopparapu does not however teach estimating the time of queue completion without taking the task to be assigned into account.

This method is, as disclosed in applicant's specification, is seen to be unobvious to one of ordinary skill in the art.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob Lipman whose telephone number is 703-305-0716. The examiner can normally be reached on 7:00 - 4:00 (M-Th).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse can be reached on 703-308-4789. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JL



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